THE HONOURABLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.6656 OF 2007

DATED 03.04.2007

BETWEEN

Syed Raheemuddin

… Petitioner

AND

The District Collector, Ranga Reddy District, Hyderabad
and others.

… Respondents

THE HONOURABLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.6656 OF 2007

ORDER:

The petitioner is allegedly owner of land admeasuring Ac.10.20 guntas in survey Nos.1 to 5, 10, 15, 26, 65, 874 and 58 situated at

Nadurgul Village of Saroornagar Mandal in Ranga Reddy District. He alleges that since 1954-1955, he has been in possession of the property along with his father as cultivating tenants. The third respondent and his father, who are the landholders allegedly sold the land to the petitioner, under an agreement of sale, dated 17.07.1986. When there was an interference of his brothers, the petitioner filed a suit being O.S.No.282 of 1975 against his brothers for permanent injunction. The same was decreed and was also confirmed in A.S.No.156 of 1981 by the Court of the Additional Chief Judge, City Civil Court, Hyderabad. Later, the petitioner also filed O.S.No.297 of 1994 against the father of third respondent for specific performance of agreement of sale, which is pending. It is the further case of the petitioner that the Government acquired an extent of Ac.6.30 guntas in survey Nos.1 to 5 and 26 under proceedings, dated 13.06.1994. The petitioner and his father filed claim petition for compensation. In the meanwhile, father of the third respondent filed an application before the Revenue Divisional Officer, Hyderabad, claiming Occupancy Rights Certificate (Occupancy Rights Certificate) in respect of the land admeasuring Ac.3.15 guntas in survey Nos.1 to 5 and 26. The Revenue Divisional Officer (Revenue Divisional Officer) granted Occupancy Rights Certificate on 12.05.1992. The petitioner then preferred an appeal before the Joint Collector. While the same was pending, the petitioner also filed W.P.No.18211 of 1994 for declaration that the award passed by the Land Acquisition Officer is illegal and arbitrary and for a direction to refer the matter to the civil Court. This Court allowed the writ petition on 26.03.2003 directing the District Collector to dispose of the appeal expeditiously with in a period of six weeks. On 20.09.2005, the Joint Collector dismissed appeal for non-prosecution. The petitioner then filed an application to set aside the order dismissing the appeal for default. By Memo, dated 02.12.2005, the application was also rejected. Aggrieved by the two orders, the present writ petition is filed seeking a direction to the second respondent to dispose of the appeal on merits after setting aside the orders of the appellate authority dismissing the appeal for default.

Learned counsel for the petitioner submits that the appeal was dismissed by the Joint Collector erroneously on the ground that the petitioner or his counsel was absent during several hearings. He submits that the petitioner is always ready and in spite of request by the petitioner, the appeal was not disposed of for a period of two years after disposal of the W.P.No.18211 of 1994 by this Court.

A perusal of the order passed by the second respondent on 20.09.2005 would show that except on three occasions on 26.04.1994, 05.09.1994 and 17.10.2004 neither the petitioner nor his counsel were

present when the case was called by the second respondent. Therefore, the second respondent was justified in coming to the conclusion that the petitioner did not evince any interest in prosecuting the case. Further, in the affidavit accompanying the writ petition, in para 4, the petitioner made the following allegations.

> I submit that the appeal before the Joint Collector, R.R.District in file No.2184/94 was pending for long time inspite of my repeated persuasion the appeal was posted for final arguments and filing of supporting documents on 20.09.2005 at 11.00 am. As there was Muslim festival of Shaba Mirza on 19.09.2005, I was taken up through out the night as per our custom and on 19.09.2005 I went to my counsel around 10.30 am and as my counsel appearing in the appeal was held up at Ranga Reddy District Courts I went to make a request to adjourn the appeal but by that time unfortunately the Joint Collector dismissed the appeal for non-prosecution without considering my request and hearing me. The said order is an ex parte default order and the appeal was not decided on merits as directed by this Hon'ble Court in W.P.No.18211 of 1994. In fact, the appeal was kept pending for more than two years in spite of my repeated persuasion and hurriedly dismissed on 20.09.2005 without any justification.

Nowhere there is a denial about the particulars of appearance of parties before the Joint Collector as shown in the impugned order. The reasons for the absence on 20.09.2005 mentioned in the writ affidavit, cannot be sufficient cause to set aside the order dismissing the appeal for default when the petitioner or his counsel was continuously absent before the Joint Collector. Even on 20.09.2005, the petitioner or counsel was absent and in such a case, this Court cannot differ with the view taken by the second respondent in dismissing the appeal for default.

The writ petition is accordingly dismissed. No costs.

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(V.V.S.RAO,J)

03.04.2007.
pln